



Paper 11

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MAR 17 2006

OFFICE OF PETITIONS

In re Application of
Michael Becker et al.
Application No. 10/012,200
Filed: November 13, 2001
Attorney Docket No. Westphal.6469

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ON PETITION

This is a decision on the petition filed March 6, 2006, to withdraw the holding of abandonment of the above-identified application under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on December 12, 2003 for failure to file a proper reply to a Final Office Action mailed September 11, 2003 in compliance with 37 CFR 1.113. Accordingly, a Notice of Abandonment was mailed November 16, 2004.

A proposed response to the Final Office Action, a Notice of Appeal, was filed December 15, 2003 with a certificate of mail dated December 11, 2003, however it was not in the proper format. Amongst other requirements, a reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The Notice of Appeal filed December 11, 2003 did not identify the rejected claim or claims appealed, it simply stated that "Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the Examiner".

In view thereof and since a proper response was not timely filed, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section

1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR

1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

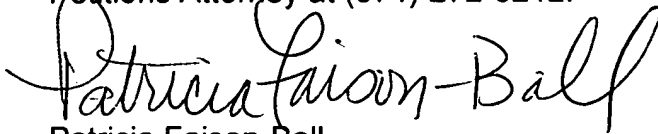
Additionally, the file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script that reads "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc:

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